Supreme Court, U.S.
FILED
06-25 JAN 19 2006
OFFICE OF THE CLERK

No.

In the

SUPREME COURT OF THE UNITED STATES

JACKIE BROOKS,

Petitioner

V

AMERICAN GENERAL FINANCE, INC

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JACKIE BROOKS, Pro Se
8240 Jackson Street
St. Louis, Missouri 63114
314-428-5498

On this 19th day of January, 2006

QUESTIONS PRESENTED

1. The bankruptcy court abused its discretion pursuant to 11 U.S.C. § 362 when it deprived the petitioner of his constitutional right of due process by misapplying the bankruptcy code to grant Respondent a relief from the automatic stay pursuant to Bankr. R. 362(d) when Respondent had not filed a motion to reopen the bankruptcy case (No. 95-42416-399; April 2000) after the case was closed for over year. On April 13, 2001, Respondent's attorney filed a motion for foreclosure without a motion to reopen the dismissed bankruptcy case of April 2000. 11 U.S.C. § 350(b) governing these procedures 11 U.S.C. § 350(b) states:

> "Subsection (b) permits reopening of a case to administer assets, to accord relief to the debtor, or for other cause. Though the court may permit reopening of so that the trustee may administer exercise an avoiding power, laches may constitute a bar to an action that has been delayed too long."

2. The Bankruptcy Court abused its discretion when it lacks subject matter Jurisdiction to grant a relief from an automatic stay of a dismissed bankruptcy case. So under what authority does it have within the bankruptcy statute granted by U.S. congress if there was not timely objection or an appeal file of the dismissal?

LIST OF PARTIES

Petitioner Jackie Brooks is a resident and citizen of the State of Missouri and of the United States of America.

Respondent real party in interest American General Finance (Second Mortgage) was at all pertinent times, a corporate office located in the State of Missouri and of the United States of America.

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PETITION FOR WRIT OF CERTIORARI

Jackie Brooks respectfully petitions for a writ of certiorari to review the judgment of the United States Eighth Circuit Court of Appeals.

OPINIONS BELOW

The opinion of the United States Court for the Eighth Circuit Court summarily affirming the District Court decision is reproduced in the Appendix at (**Pet. App. A1**). The opinion denying rehearing petition rehearing en banc is reproduced in Appendix at (**Pet. App. A2**). The opinion of the district court is reproduced in the Appendix at (**Pet. App. A3**). None of the opinions are reported.

JURISDICTION

The judgment of the Court of appeals was entered on August 17, 2005 (Pet. App. A2). A Petition for rehearing en banc and the petition for hearing by the panel was also denied on October 21, 2005 (Pet. App. A3). The petition for writ of certiorari was filed on January 18, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. § 1245(1).

STATUTE PROVISIONS INVOLVED

Bankruptcy Rule § 350(b) motion to reopen bankruptcy case

Bankruptcy Rule § 341(a) Meeting of creditors

Bankruptcy Rule § 62

Bankruptcy Rule § 362(h)

Bankruptcy Rule § 349
Fed. Bankr. R. 7012
Fed. Civ. P. 12(h)(3)
Missouri Revised Statute 525.170
Missouri Civil Rules of Procedure 74.05(d)

STATEMENT OF THE CASE

1. Petitioner used his primary residence to secure a second mortgage with Respondent (American General Finance, Inc.) in August of 1994 for $23,697.34 (principal). Petitioner failed to make timely payment; therefore, Respondent filed a petition for a judgment before the Missouri State Court to collect on the debt. The Missouri State Court granted Respondent a default judgment on April 10, 1995 for the amount of $24,303.28 in principal, plus attorney's fees and court cost for a total of $24,953.28. The State court granted the Respondent the am ..nt principal amount he sworn to. The RSMo. 525.170 states:

> Such judgment by default may be proceeded on to final judgment, in like manner as in case of defendants in other civil actions; but no final judgment shall be rendered against the garnishee until there shall be final judgment against the defendant, and in no case for a greater amount than the amount sworn to by plaintiff, with interest and cost, or for greater amount than the garnishee shall appear to be liable for to the defendant.

2. The Respondent then filed a wage garnishment against the Petitioner. In May of 1995 Petitioner filed a bankruptcy petition under Chapter 13 pursuant to 11 U.S.C. 362(a). The Bankruptcy Court confirmed the plan without objections from the Creditors in the plan. The plan paid Respondent $381.00 each month until the plan ended, and any balance due was to be treated as an unsecured debt.

3. On December 9, 1999 the Bankruptcy Court granted Petitioner's motion to dismiss his Chapter 13 Petition and ordered the Bankruptcy Trustee to disburse all remaining funds left in the escrow to all creditors and to file its final report. On April 13, 2000 the Bankruptcy Trustee filed its final Report that Respondent had a zero balance when the bankruptcy case was dismissed. In April 2000 the Bankruptcy Court confirmed the Trustee's

Final Report and dismissed the case. The effect of the dismissal was without prejudice.

4. The Respondent made continuous efforts to collect interest on a dismissed debt from the Petitioner's 1995-closed bankruptcy. So the Petitioner on March 30, 2001 filed a third Chapter 13 Petition pursuant to Bankruptcy Code 11 U.S.C. § 362(a).

5. On April 12, 2001 Respondent filed a notice of a foreclosure sale thirty days (30) after the Petitioner filed his bankruptcy petition. On April 13, 2001 Respondent filed a motion for expedited hearing and a relief from the automatic stay. The Respondent argued that Petitioner lack adequate protection and abuse of bankruptcy filing. No evidence was presented to support Respondent's argument. Respondent's failure to file a claim is supported by Bankruptcy Trustee's Final Report of the 2001 Bankruptcy case (#01-43603-399).

6. On April 19, 2001 the Bankruptcy Court granted the Respondent's motion and the property was brought and sold by American General Finance through their attorney on April 19, 2001. The automatic stay is a statutory injunction that takes effect when a bankruptcy petition is filed and protects the debtor, the property of the estate, and property of the debtor from certain actions by creditor. The stay applies to all entities. See [B.C §§ 362, 101(5); See surpra. §29].

7. The Petitioner filed an appeal to the U.S. Eastern District Court. The District Court confirmed the Bankruptcy Court's judgment and the case were appealed to Eighth Circuit Court of Appeals. On March 24, 2003 the 8th Circuit remanded the case back while retaining jurisdiction. The Eighth Circuit remanded the case back for clarification that the lower courts conduct a specific fact finding on whether Petitioner still owed from the 1995 bankruptcy case (No. 95-42416-399) a debt to Respondent when he foreclosed on the subject property, and if so how much, and under what legal authority. The 8th circuit court asked for three things:

A. Whether a Petitioner paid Respondent in full, or in part, and received a discharge, as the trustee indicated in the final report

B. If Petitioner was still indebted to Respondent.

C. What rate of interest, if any applied?

8. On August 20, 2003 the Bankruptcy Court held a hearing and dismissed the Bankruptcy case by denying the Respondent's continuous motion for Relief from the Automatic Stay because there was no stay because the bankruptcy case was dismissed. The 8th Circuit Court accepted the Bankruptcy Court's justification and dismissed the case as moot. The Bankruptcy Court never addressed any of the concerns stated in the remand order by the 8th Circuit Court of Appeals. Most courts have looked at contested matters and adversary proceedings as "stand alone units of litigation" and determine whether the order appealed from disposed of all the claims of all the parties. see **Fed. R. Civ. P. .54(b), Fed. R. Bankr. P. 7054(a), 9014. In re Klein,** 940 F. 2d 1075, 1077 (7th Cir. 1991), **In re Ibl Sec. Serv. Inc.,** 174 B.R. 664, 668 (E.D.N.Y. 1994).

9. Petitioner filed a motion to reopen the Bankruptcy case for clarification pursuant to 11 U.S.C. Bankr. R. 350(b) and to determine if relief from the automatic stay was violated under the 11 U.S.C. Bankr. R. 362(h). The Bankruptcy Court denied Petitioner's motion by affixing "denied" seal on Petitioners motion. Legal points of authority or a conclusion of law did not support this denial.

10. Petitioner filed an appeal before the U.S. Eastern District Court. The 8th Circuit confirmed the District Court judgment because the Bankruptcy Court did not abuse its discretion in reopening the bankruptcy case.

11. The District Court denied Petitioner's motion for reconsideration on the grounds that there was no new evidence to consider after Respondent filed a res judicate motion to dismiss. A trial court abuses its discretion when it rests its conclusion on clearly erroneous factual findings or an

incorrect legal standard **In re Hammer,** 112 B.R. 341, 345 (Bankr. 9th Cir. 1991).

12. Petitioner filed a second appeal before the 8th Cir. Court of Appeals. The 8th Circuit summarily affirmed the District Court's judgment and dismissed the Appeal pursuant to Eighth Circuit Local Rule 47A(a). The Appeals Court's denial was never based on (a) lacks jurisdiction, (b) the appeal was frivolous, or that the base was without merit. Local rule states:

> The court will dismiss the appeal if is not within the courts jurisdiction or is frivolous and entirely without merit. The Court may confirm or reverse when the questions presented do not require further consideration.

The issue on appeal is whether the appeals court reviewed the whole record to determine if the bankruptcy court had jurisdiction of the April 2000 dismissed bankruptcy case or to modify a state's court judgment and if the bankruptcy procedures were violated on the 2000 bankruptcy case of the Petitioner's. Respondent received a relief from the automatic stay to foreclose on the petitioner's property while there was "no stay" (emphasis added here). The courts have held that a motion pursuant to 11 U.S.C.A. 350(b) must be filed to reopen a bankruptcy case that has been closed and fully administered by the bankruptcy trustee, See, **In re Kenk Funding Corp.**, 290 B.R. 471, 475 (Bankr. E.D. N.Y. 2003)

13. Petitioner's motion for rehearing and rehearing en banc was denied on October 21, 2005. A reason for denial was not given.

REASON FOR GRANTING THE WRIT

Statutory laws restrict the Bankruptcy Court of jurisdiction to those proceedings that could affect the administration of a bankruptcy estate by litigating a prior 1995 dismissed bankruptcy case that was fully administered and released by the trustee and closed by the Bankruptcy Court, pursuant to 28 U.S.C. § 1334. Once a court has dismissed or discharged a

bankruptcy case the prior claim is barred by principles of res judicate and the Rooker-Feldman Doctrine. **See Rooker v. Fidelity Trust, Co.** 263 U.S. 413, 416, 68 L. Ed 362. 44 S. Ct. 149 (1923); **District of Columbia Court of Appeals v. Feldman**, 460 U.S. 462, 75 L. Ed. 2d 206, 103 S. Ct. 1303 (1963). The Bankruptcy Court is without jurisdiction to entertain any proceedings if a bankruptcy case has been closed and the estate no longer exists, and where the Respondent has failed to have the bankruptcy case reopened pursuant to 11 U.S.C. § 350(b) and Rule 5010 for good cause. **Walnut Associates v. Saidel,** 164 B.R. 487, 491 (E.D. Pa. 1994) Until a Bankruptcy Case is reopened the Court lacks subject matter jurisdiction over a closed bankruptcy case. When a case has been dismissed and not closed it could not be reopened. **Statistical Tabulating Corp., Inc. v. United States of America**, 60 F.3d 1286; 1995 U.S. App. Lexis 20471. To resurrect a dismissed bankruptcy case that has been dismissed can never be "undismissed". **In Matter of Statistical Tabulating Corp.**, (quoting) **In re Woodhaven, LTd.**, 139 Bankr. 745 (N.D. Ala. 1992) and Matter **of Garcia**, 115 Bankr. 169 (N.D. Ind. 1990).

Respondent's motion for relief from the automatic stay was barred by laches. If an objection is not made of a motion to dismiss a Bankruptcy Chapter 13 Petition, it is inexcusable for one to wait for more than a year after the case has been dismissed. **See, Virgin Islands Bureau of Internal Revenue V. St. Croix Hotel Corporation,** 60 B.R. 412, 1986 U.S. Dist. LEXIS 2662. Pursuant to 11 U.S.C. § 350a closed the bankruptcy case and 11 U.S.C. § 350(b) reopens the case but does not restore the prebankruptcy status. There is no provision in the statute that a motion for expedited hearing acts as a motion to reopen a bankruptcy case. The Bankruptcy Court granted the Petitioner's motion to dismiss his 1995 bankruptcy petition on April 13, 2000.

Bankruptcy Court who had jurisdiction over the 2001 bankruptcy case abused its discretion in granting a relief from automatic stay in a prior case that was dismissed for over a year.

The Respondent's motion for relief from the automatic stay on April 13, 2001 is barred because there was not stay to get such a relief from. The Bankruptcy Trustee's Final Report showed Respondent was paid in full with a zero balance when the case was dismissed. The Bankruptcy Court confirmed the Bankruptcy Trustee's Final Report and the case were dismissed in April of 2000.

Pursuant to 11 U.S.C. § 349, treating the effect of a bankruptcy that is dismissed is reinvested with the estate, subject to all encumbrances, which existed prior to the bankruptcy. **In re Income Property Builders, Inc. v. The Lomas & Nettleton Company**, 699 F. 2d 963 (9th Cir. 1982).

A void judgment is one that has been procured by extrinsic or collateral fraud or entered by a court that did not have jurisdiction over the subject matter or parties. **Rook v. Rook**, 223 VA, 92, 95, 353 S.E. 2d 756, 758 (1987).

The state court granted a default judgment that was litigated before the state court proceeding. The United States Circuit Courts Of Appeals has always applied the (Rocker-Feldman doctrine) **Rocker v. Fidelity Trust Co.**, 263 U.S. 411, 44 S. Ct. 149, 68 L. Ed. 362 (1923) and denied any attempt to alter the decision of the state courts. Lack of subject matter jurisdiction is insusceptible to waiver, and may be raised at any time during the course of an action by a party thereto, the court sua sponte (quoting) the **Magee v. Exxon Corp.** 135 F. 3d 599, 601 (8th Cir. 1998); **Berger Levee Dist. V. United States,** 128 F. 3d 679, 680 (8th Cir. 1997); **Bueford v. Resolution Trust Corp.**, 991 F. 2d 481, 485 (8th Cir. 1993); Fed. R. Bankr. P. 7012(b); Fed. R. Civ. P. 12(h)(3). The Rooker-Doctrine "derives from the prohibition on federal appellate review of state court proceedings" **Bechtod v. City of Rosemount**, F.2d 1062, 1065 (8th Cir. 1997); see **Hatcher v. U.S. Trustee (In re Hatcher)**, 218 B.R. 441, 447 (B.A. P. 8th Cir. 1998).

The Missouri Civil Rules of Procedure provides under 74.05(d) that a default judgment can be set aside "[u] pon motion stating facts constituting

a meritorious defense and for good cause shown See **Vonsmith v. Vonsmith**, 66 S.W. 2d 424 (Mo. Banc 1984). Respondent failed to file such a motion to set aside the state court's judgment, therefore, the Bankruptcy Court lacks jurisdiction to alter the court's judgment by granting interest that was not within the confirmed Petitioners 1995 Chapter 13 plan. Granting the Respondent a relief from the automatic stay and to foreclose on Petitioner's property denies Petitioner of his constitutional rights under the bankruptcy states that were provided by congress.

The review of state court's decisions lies exclusively in the United States Supreme Court, **First Commercial Trust Co. v. Colt's Mfg. Co.** 77 F.3d 1081, 1083 (8th Cir. 1996); **Postma v. First Fed. Sav. & Loan**, 74 F.3d 160, 162 (8th Cir. 1996). The Eighth Circuit has the obligation to conduct a jurisdictional inquiry to determine if jurisdiction has been applied in this case. Bankruptcy court pursuant to the Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, provides that when it appears by suggestion of the parties or otherwise that the court lacks suject matter, the court shall dismiss the action. "Fed. R. Civ. P. 12(h)(3).

The state court's judgment is final once a party fails to file a motion objecting to the court's judgment and fails to raise a defense when it had the opportunity to pursue its claim in the state proceeding.

This court has rule "an order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue". (**See Rose v. Himely** (1808) 4 Cranch 242, 2 L ed 608; **Pennover v. Neff** (1877) 95 US 714, 24 L ed 565; **Thompson v. Whitman** (1873) 18 Wall 457, 21 l ED 897; **Windsor v. McVeigh** (1876) 93 US 274, 23 L ed 914; **McDonal v. Mabee** (1917) 243 US 90, 37 S. Ct 343, 61 L. ed 608.

"If a court grants relief, which under the circumstances it has not any authority to grant, its judgment is to that extent void." Courts must vacate any judgment entered in excess of its jurisdiction in **Judon v. Gilligan**, 500

F. 2d 701, 710 (6th Cir).

When the Circuit Court remanded the Bankruptcy Case No. 43603-399 back to the Bankruptcy Court for clarification of an order it no longer has jurisdiction if the Appeals Court retains jurisdiction on remand. The Bankruptcy Court dismissed the underlying case but the issue on appeal was still vested in the Appeals Court. This Court has supported the general rule that filing of a notice of appeals divests the lower court of jurisdiction over the matter on appeal. **Statistical Tabulating Corp., Inc.** 60 F. 3d 1286 (citing) **Griggs v. Provident Consumer Discount Co.,** 459 U.S. 56, 58, 74 L. Ed.2d 225 103 S. Ct. 400 (1982); **In re Alwan Bros. Co.,** 115 Bankr. 148, 150 (Bankr. C.D. Ill, 1990) ("upon the filing of a notice of appeal from an order of the bankruptcy court, the bankruptcy court loses jurisdiction over matters involved in the appeal").

The 8th Circuit Court retained jurisdiction over the 2001 bankruptcy case but lacked jurisdiction over the 1995 bankruptcy case which was fully administered by the Bankruptcy.

Trustee was dismissed. For the Bankruptcy Court to grant a relief from the automatic stay of the 1995 Bankruptcy case is an abuse of discretion.

CONCLUSION

The Petition for a writ of Certiorari should be granted.

Respectfully submitted.

Jackie Brooks, Petitioner
Pro Se

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 05-2330

In re: Jackie Brooks,

Appellant.

v.

American General Financial Services, Inc.,

Appellee,

Order Denying Petition for Rehearing and for Rehearing En Banc

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

(5128-010199)

October 21, 2005

Order Entered at the Direction of the Court:

/s/ Michael G. Qaus
MICHAEL G. QAUS
Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 05-2330

In re: Jackie Brooks,
Debtor.

Jackie Brooks,
Appellant,
v.
American General Financial Services, Inc.,
Appellee,

Peter Lumaghi,
Trustee.

Appeal from the United States District Court for the Eastern District of Missouri

JUDGMENT

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

(5361-010199)

August 17, 2005

Order Entered at the Direction of the Court:

/s/ Michael G. Qaus
MICHAEL G. QAUS
Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RECEIVED
May 6, 2005
U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

JACKIE BROOKS,

Appellant,

v.

AMERICAN GENERAL FINANCIAL SERVICES, INC.,

Appellee,

Case No. 4:04CV526 RWS

ORDER

This matter before me on Appellant's motion for reconsideration of my order denying his bankruptcy appeal. Appellant's motion fails to offer any new facts or legal argument that were not before me when the order was issued.

Accordingly,

IT IS HEREBY ORDERED that the Appellant's motion for reconsideration [#13] is **DENIED**.

/s/ Rodney W. Sippel
RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 8th day of April, 2005.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RECEIVED
May 6, 2005
U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

JACKIE BROOKS,

Appellant,

v.

AMERICAN GENERAL FINANCIAL SERVICES, INC.,

APPELLEE,

Case No. 4:04CV526 RWS

ORDER

This matter is an appeal of two orders of the bankruptcy court denying Appellant Brooks' motions to reopen his bankruptcy case entered by the bankruptcy court. Brooks' appeal will be denied because the bankruptcy court did not abuse its discretion when rendering these decisions.

Background

During the past ten years Brooks filed three separate bankruptcy cases under Chapter 13 of the United States Bankruptcy Code, 11 U.S.C. §§ 1301, *et seq.*, case numbers 95-42416-399; 00-50682-399 and 01-43603-399. All three cases were dismissed prior to Brooks' completion of his plan payments and, as a result, Brooks did not receive a discharge.

This appeal concerns case number 01-43603-399 filed on March 30, 2001. The bankruptcy court dismissed this case on March 14, 2002 based on Brooks' failure to make plan payments to the Chapter 13 trustee. Brooks' filed a motion to vacate the dismissal order which was denied by the bankruptcy court on April 8, 2002, because Brooks failed to become current with his payments to the trustee which is required before a dismissal can be vacated.

When the case was closed, an appeal of a ruling by the bankruptcy court made in the case in 2001 was pending before the United States Circuit District Court for the Eastern District of Missouri. The ruling concerned the bankruptcy court's grant of a relief from stay and a ratification of a foreclosure sale to Appellee American General Finance. American General had foreclosed on real property owned by Brooks. Brooks appealed the bankruptcy court's order and raised the issue of whether he owed any money to American General. On July 12, 2002, the case was administratively reopened to docket the District Court's order affirming the bankruptcy court's decision. The case was reclosed on the same day.

On August 29, 2002, Brooks appealed the District Court's decision to the United States Court of Appeals for Eighth Circuit. On March 24, 2003, the Eighth Circuit did not find error in the bankruptcy court's ratification of American General's foreclosure but remanded the case for the bankruptcy court to clarify some factual issues regarding any debt that Brooks may still owe American General.

After remand the bankruptcy court held a hearing on August 20, 2003. Instead of addressing the factual questions posed by the Eighth Circuit, the bankruptcy court determined that American General's motion for relief from stay, which was at issue in the appeal before the Eighth Circuit, had become moot because Brooks' bankruptcy had already been dismissed on March 14, 2002 for failure to make plan payments. The bankruptcy court issued an order on August 20, 2003, denying General American's motion for relief from stay because the case had been dismissed. The bankruptcy court's order was filed with the Eighth Circuit which, in turn, dismissed Brooks' appeal as moot on January 8, 2004.

On March 31, 2004, Brooks filed two motions to reopen his bankruptcy case which the bankruptcy court summarily denied on April 7, 2004. This appeal followed

Analysis

Brooks appeals the bankruptcy court's orders denying his motions to reopen his bankruptcy case. A bankruptcy judge is granted the power to reopen a case under 11 U.S.C. § 350(b). A bankruptcy court's decision not to reopen a case is reviewed under an abuse of discretion standard. In re Canal Street Ltd. Partnership, 269 B.R. 375, 379 (8th Cir. BAP 2001). Under an abuse of discretion standard the bankruptcy court's ruling should not be reversed unless the appellate court has a definite and firm conviction that the bankruptcy court committed a clear error of judgment in the conclusion it reached. Id.

Brooks is not a stranger to the bankruptcy process. He filed two Chapter 13 bankruptcies that were both dismissed before he filed the present bankruptcy at issue in this appeal. The bankruptcy case at issue was dismissed on March 14, 2002 for his failure to make plan payments. He again waived the possibility of having the case reinstated when he failed to become current on his payments to the trustee in a timely manner after he filed his motion to vacate the bankruptcy dismissal on March 24, 2002.

His appeal to the Eighth Circuit dealt with the question of whether the bankruptcy court properly ratified American General's foreclosure sale of Brooks' real property. That appeal has been dismissed as moot because his bankruptcy case was dismissed. The only question before me is whether the bankruptcy court abused its discretion in declining to grant Brooks' motions to reopen is bankruptcy case. Because of Brooks' failure to comply with the rules and requirements of a debtor in Chapter 13, I cannot conclude that the bankruptcy court's decisions denying Brooks' motions to reopen his bankruptcy case were an abuse of discretion.

Accordingly,

IT IS HEREBY ORDERED that the bankruptcy court's orders denying Appellant Jackie Brooks' motions to reopen his bankruptcy case are affirmed.

/s/ Rodney W. Sippel
RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 28th day of March, 2005.

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-3041

In re: Jackie Brooks, Debtor.	*	
Jackie Brooks, Appellant, v. American General Financial Inc., Appellee, Peter Lumaghi, Trustee.	*	Appeal from the United States District Court for the Eastern District of Missouri

Submitted: February 7, 2003
Filed: March 24, 2003

Before BYE, FAGG, and RILEY, Circuit Judges.

RILEY, Circuit Judge.

Jackie Brooks (Brooks) appeals the district court's orders affirming the bankruptcy court's grant of relief from automatic stay, and denying disqualification and a rehearing. We remand this matter for factual

findings and clarification, while retaining jurisdiction over the appeal.

I. BACKGROUND

In August 1994, Brooks and his wife, Mary, signed a note to American General Finance (AGF) for $68,750.84, securing it with a second mortgage on a residence occupied by Brooks's brother. The note represented a principal amount of $23,697.34 plus 18% interest for fifteen years (amounting to $45,053.50). After Brooks ceased making payments, AGF sued in March 1995 and received a state court default judgment for $24,303.28 in principal, plus fees and costs, for a total of $24,953.28. The judgment contained dashes next to the line titled "interest." Brooks filed for Chapter 13 bankruptcy shortly thereafter, and between July 1995 and December 1999, the bankruptcy trustee made $21,370.72 in payments to AGF. The bankruptcy case was dismissed on Brooks's motion, tne a "Trustee's Final Report and Account" indicated that AGF had been paid $21,370.72 in principal, and no balance was due. The trustee's report also stated the case had been fully administered, and requested entry of a discharge order. Thereafter, AGF twice sought to foreclose on the property, with Brooks filing bankruptcy each time and halting the sale. This appeal arises out of AGF's second foreclosure attempt.

On March 16, 2001, AGF mailed its notice of intent to conduct a foreclosure sale on April 12. After Brooks filed for Chapter 13 bankruptcy, AGF agreed to postpone the sale until April 19, and moved for relief from the automatic stay. At an April 17 relief-from-stay hearing, the parties agreed to postpone the sale and to continue the hearing until May 14, conditioned upon Brooks signing a consent form before the scheduled time for the sale. However, the consent form AGF presented to Brooks to sign required Mary's signature as well. When AGF refused to remove Mary's name, Brooks refused to sign the form. On April 19, AGF's counsel appeared *ex parte* before the bankruptcy court to report that Brooks had not signed the consent form. The court gave AGF permission to proceed with the sale, and AGF brought the property for $30,000 later that day.

Brooks moved for a rehearing or to set aside the grant of relief from the stay, arguing the foreclosure had been obtained by deceit. The court set aside the foreclosure sale, even though it ultimately concluded AGF's conduct was a mistake. The court also granted AGF's renewed motion for relief from the stay and its motion to ratify the sale. During the hearing on the motion, Brooks argued the trustee's final report reflected all of the plan payments had gone toward principal, contending AGF was not entitled to recover interest under either the default judgment or the Chapter 13 confirmation plan. AGF countered that Brooks still owed a substantial sum because the default judgment had accrued interest at the contract rate, and the payments Brooks's trustee had made in the bankruptcy proceeding had gone primarily to interest. The court agreed with AGF, concluding that a "substantial balance" of $29,946.00 remained due because of "relentless interest." Further, because no payments had been made for eighteen months, the court found cause to lift the stay. Brooks appealed to the district court, which affirmed. This appeal followed.

II. DISCUSSION

Brooks raises numerous arguments on appeal. A number of these arguments clearly lack merit, and we reject them *seriatim* as follows: (1) Brooks received adequate written notice of the foreclosure sale under Mo. Rev. Stat. § 443.325 (2000); in any case, he has not shown prejudice from any such lack of notice; (2) the bankruptcy court cured any error in conducting the April 19, 2001, *ex parte* hearing–including any due process violation, cf. In re Banks, 299 F.3d 296, 302 (4th Cir. 2002) (due process generally entitles party to notice specified by Bankruptcy Code)–by reversing its earlier decision and requiring AGF to move anew for relief from the stay, see In re Wieseler, 934 F.2d 965, 968 (8th Cir. 1991) (even if bankruptcy court erred in failing to hold hearing on motion to lift the stay, court cured error by holding hearing on reconsideration motion); (3) Brooks presented no evidence to support his argument that the district cour was biased, or

that the court's summary rulings on his motions violated due process or were otherwise erroneous, see Primary Care Investors, Seven, Inc. v. PHP Healthcare Corp., 986 F.2d 1208, 1212 (8th Cir. 1993); (4) Brooks did not object to the admission of the transcript of the *ex parte* April 19 hearing in his appeal to the district court, and, in any case, the transcript is part of the record an appellate court may review, cf. Fed. R. App. P. 10(a); (5) the April 19 order granting relief from the stay stated, "Movant is entitled to ... foreclose ... and ... is specifically allowed to conduct its foreclosure sale of said property on ... April 19, 2001 at 12:00 Noon;" thus, no ten-day stay was in effect, see Fed. R. Bankr. P. 4001(a)(3) (order granting relief from stay is stayed for 10 days, unless court orders otherwise); and (6) no basis exists for challenging the bankruptcy court's jurisdiction, see generally 28 U.S.C. §§ 157(b), 1334.

The issues of the debt and interest on the debt are not easily resolved. The bankruptcy court concluded AGF's judgment accrued interest at the contract rate during Brooks's 1995 bankruptcy. The district court affirmed based on Mo. Rev. Stat. § 408.040.1 (interest shall be allowed on judgment from day of rendering until satisfaction; judgments upon contracts bearing more than 9% interest shall bear same interest borne by such contracts). However, bankruptcy law governs the issue. See Bursch v. Beardsley & Piper, 971 F.2d 108, 114 (8th Cir. 1992) (federal law determines creditor's rights after filing of bankruptcy petition). Bankruptcy law generally does not provide for collection of interest accruing after the filing of a bankruptcy petition. See, e.g., In re Hanna, 872 F.2d 829, 831 (8th Cir. 1989) (post petition interest is disallowed against estate under section 502). The Bankruptcy Code does allow collection of interest or its functional equivalent under certain circumstances, see, e.g., 11 U.S.C. §§ 506(b), 1325 (2000); In re Milham, 141 F.3d 420, 423-24 (2d Cir. 1998), but we cannot determine from the record before us whether these provisions were applied by the bankruptcy court or the district court.

On appeal, AGF maintains Brooks's 1995 Chapter 13 plan provided for long-term payments under 11 U.S.C. § 1322(b)(5), and, thus, Brooks agreed to pay interest at the contract rate and the debt was excepted from discharge. See 11 U.S.C. § 1328(a)(1). AGF further asserts Brooks did not complete his payments or receive a discharge, and the interest in the property thus revested in AGF as a creditor under 11 U.S.C. § 349(b)(3). Yet Brooks has repeatedly claimed he paid AGF in full and received a discharge. The trustee's final report supports Brooks's claim of full payment. The courts below did not conduct specific fact finding on whether Brooks still owed a debt to AGF when it foreclosed on the subject property, and, if so, how much, and under what legal authority.

Even assuming the debt was not paid in full or discharged and AGF was entitled to collect interest on its judgment, it is not clear what rate of interest would apply. See, e.g., In re Milham, 141 F.3d at 423-24 (under section 1325, plan must provide for payment of present value of allowed secured claim; present value is achieved by payment of interest calculated according to a formula); 11 U.S.C. § 1322(e) (calculation of amount necessary to cure default); In re Cabrera, 99 F.3d 684, 685 (5th Cir. 1996) (recognizing Bankruptcy ACt of 1994 amended section 1322, but only for agreements entered into after October 22, 1994).

III. CONCLUSION

Accordingly, we retain jurisdiction over this appeal, but remand for findings to determine (1) whether Brooks paid AGF in full, or in part, and received a discharge, as the trustee indicated in the final report; and (2) if Brooks was still indebted to AGF, what rate of interest, if any, applied.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re	)	
JACKIE BROOKS,	)	Case No. 01-43603-399
	)	
Debtor,	)	Chapter 13
	)	
v.	)	
	)	
AMERICAN GENERAL FINANCE, INC.,	)	
	)	
Movant.	)	

ORDER

At Saint Louis, in this Distrct, this 20th day of August, 2003.

This mornings hearing was called in response to the Order of Remand issued by the Order of the United States Court of Appeals for the Eighth Circuit, dated March 24, 2003, and the Order of the United States District Court, dated May 1, 2003. American General Finance appeared through its counsel Gerard A. Neiters and Jackie Brooks appeared pro-se. The matter before the court is a continuation of the hearing of the motion of American General Finance relief from stay. The Court noted that Mr. Brooks' Chapter 13 case was dismissed on March 14, 2002. Accordingly, it is

ORDERED that Motion For Relief is DENIED. Since there is no Chapter 13 case pending there is no stay from which relief may be sought.

/s/ Barry S. Schermer
BARRY S. SCHERMER
United States Bankruptcy Judge

Copy mailed to:

Jackie Brooks
Debtor
8240 Jackson
St. Louis, MO 63114

Christi S. Fingal
Attorney for Debtor
211 North Broadway, Suite 2410
St. Louis, MO 63102

Gerard A. Neiters
Attorney for American General Finance, Inc.
113 Triad Center
O'Fallon, MO 63366-7542

Office of the United States Trustee
Thomas F. Eagleton Federal Court House
111 S. 10th Street, Suite 6353
St. Louis, MO 63102

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 02-3041

In re: Jackie Brooks,
Debtor.

Jackie Brooks,
Appellant,
v.
American General Finance, Inc.;
Appellee,

Appeal from the United States District Court for the Eastern District of Missouri

JUDGMENT

Upon consideration of the bankruptcy court's order of August 20, 2003, entered on remand from this court, the appeal is dismissed as moot. (5361-010199)

January 8, 2004

Order Entered at the Direction of the Court:
/s/ Michael G. Qaus
MICHAEL G. QAUS
Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES BANKRUPTCY COURT
EASTERN DIVISION OF MISSOURI
EASTERN DIVISION

In re:	
JACKIE BROOKS,	Case No. 95-42416-399
Debtor	Chapter 13
	MOTION TO DISMISS
	Motion #52
	ORDER OF DISMISSAL

At Saint Louis, in this District, this 9th day of December, 1999.

The Debtor's Motion To Dismiss was filed December 6, 1999. Accordingly, it is ORDERED that the Debtor's Motion to Dismiss be and it hereby is GRANTED, in that this Chapter 13 case be and it hereby is DISMISSED, and the stays of 11 U.S.C. §362 are hereby terminated.

IT IS FURTHER ORDERED that this Court's Order To Deduct From Wages Or Other Income, filed May 22, 1995, directed to Ferguson-Florissant School District, be and hereby is terminated and Ferguson-Florissant School District is directed to cease withholding from Debtor's wages in respect of Debtor's Chapter 13 case.

IT IS FURTHER ORDERED that John V. LaBarge, Jr., Chapter 13 Trustee, is directed to disburse the remaining funds in accordance with the Debtor's confirmed plan.

IT IS FURTHER ORDERED that the Trustee shall promptly file his final report and upon so doing is discharged as Trustee and is relieved of and discharged from his bond.

IS IS FURTHER ORDERED that all pending Motions and Applications, if any, are

hereby DENIED, as moot.

/s/ Barry S. Schermer
BARRY S. SCHERMER
United States Bankruptcy Judge

Copy mailed to:

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Attorney for Debtor
211 North Broadway, Suite 2410
St. Louis, MO 63102

Jackie Brooks
Debtor
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John V. LaBarge, Jr.
Chapter 13 Trustee
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St. Louis, MO 63143

Attn: Payroll Department
Ferguson-Florissant School District
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St. Louis, MO 63033

Office of the United States Trustee
815 Olive Street, Room 412
St. Louis, Missouri 63101

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT
EASTERN DIVISION

RECEIVED & FILED
2000 APR 13 P 2:24
U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

RE:

JACKIE BROOKS
8240 JACKSON
ST. LOUIS, MO. 63114-0000
SSI: 492-45-3431 000-00-0000

CASE NO. 95-42425-399

CHAPTER 13

DATE: 04/10/00

TRUSTEE'S FINAL REPORT AND ACCOUNT

JOHN V. LABARGE, JR., TRUSTEE FOR THE ABOVE CASE, SUBMITS THE FOLLOWING FINAL REPORT AND ACCOUNT OF THE ADMINISTRATION OF THE ESTATE PURSUANT TO 11 USC: 1302 (S) (1).

1. THE CASE WAS FILED ON MAY 1, 1995 AND CONFIRMED ON JUL 13, 1995. THE CASE WAS SUBSEQUENTLY DISMISSED AFTER CONFIRMATION ON DEC 9, 1999.

2. THE AMOUNT PAID TO THE TRUSTEE BY OR ON BEHALF OF THE DEBTOR(S) WAS $59,300.00.

3. THE TRUSTEE MADE DISBURSEMENTS AS FOLLOWS:

CREDITOR NAME / TYPE	CLAIM AMT	PRIN PD	INT PD	BAL DUE
AMERICAN GENERAL FINANCE HOME MORTGAGE PAYMENT CONTINUING DEBT	.00	21370.72	.00	.00
CLERK, US BANKRUPTCY COURT CLERK COSTS	130.00	130.00	.00	.00
EDUCATIONAL EMPLOYEES CREDIT SECURED	13925.39	12033.70	5240.23	1891.60
EQUALITY SAVINGS & LOAN HOME MORTGAGE PAYMENT CONTINUING DEBT	.00	10632.21	.00	.00
EQUALITY SAVINGS & LOAN HOME MORTGAGE ARREARAGE	2627.13	2270.29	996.09	355.30
???? CONSUMER FINANCIAL HOME MORTGAGE ARREARAGE	1065.20	1005.20	134.15	.00
JOHN V LABARGE JR NOTICING FEES-TRUSTEE	10.00	10.00	.00	.00
MERCANTILE BANK SECURED	1029.00	534.03	400.23	144.90
ST LOUIS CO COLLECTOR OF REV SECURED	4553.57	1429.81	1275.95	312.00

PAGE 1 - CONTINUED ON NEXT PAGE

CHAPTER 13 CASE NO. 95-42415-399

CREDITOR NAME / TYPE	CLASS	CLAIM AMT	PRIN PD	INT PD	BAL DUE
JOHN V. LABARGE, JR. TRUSTEE FEES		.00	1977.24	.00	.00
TOTAL DISBURSED:	59,300.00	51703.25	3096.75		

4. SUMMARY OF DISBURSEMENTS TO CREDITORS:

	PRIORITY	UNSECURED	SECURED	TOTAL
CLAIM AMOUNT	15769.66	4771.74	62100.50	32641.90
PRINCIPAL PAID	.00	.00	49686.01	49686.01
INTEREST PAID	.00	.00	8096.75	8096.75

5. COSTS OF ADMINISTRATION:

CLERK	130.00
TRUSTEE	1,327.24
ATTORNEY	.00
REFUNDS TO DEBTOR OR CHAPTER 7 TRUSTEE	.00

JOHN V. LABARGE, JR., STANDING TRUSTEE FOR THE ABOVE NAMED CASE, CERTIFIED TO THE COURT AND THE UNITED STATES TRUSTEE, THAT HE HAS FAITHFULLY AND PROPERLY FULFILLED THE DUTIES OF THE STANDING TRUSTEE, AND THAT THE CHAPTER THIRTEEN CASE HAS BEEN FULLY ADMINISTERED.

WHEREFORE THE TRUSTEE REQUESTS AN ORDER BE ENTERED WHICH DISCHARGES THE CHAPTER THIRTEEN TRUSTEE AND ITS SURETY FROM ANY AND ALL LIABILITY ON ACCOUNT OF THE ABOVE CASE, CLOSES THE CHAPTER THIRTEEN ESTATE, AND GRANTS SUCH OTHERS RELIEF AS MAY BE JUST AND PROPER.

/s/ John V. LaBarge, Jr.
JOHN V. LABARGE, JR.
CHAPTER 13 TRUSTEE
P.O. BOX 430908
ST. LOUIS, MO 63143

CC JACKIE BROOKS
8240 JACKSON
ST. LOUIS, MO. 63114

CHRISTI FINGAL
211 N BROADWAY
STE 2050
ST LOUIS MO 63102-0000

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

/s/ American General PLAINTIFFS	FILED APR 10 1995 GENE OVERALL EASTERN DISTRICT OF MO ST. LOUIS	4-10-95 DATE 21695-4612 CASE NUMBER 32 TEAM/DIVISION
/s/ Jackie Brooks & Mary Brooks DEFENDANTS		

JUDGMENT IN DEFAULT Jackie Brooks only

The plaintiff(s) appears in person and/or by attorney. The defendant(s) although called three times appear(s) not. The court finds that the defendant(s) is in default. This cause now being submitted to the court upon the pleadings and evidence, and the court being fully advised in the premises finds that the plaintiff(s) is entitled to a default judgment.

Wherefore, it is ORDERED, ADJUDGED AND DECREED that the plaintiff(s) have and recover from the defendant(s) as follows:

$ 24,303.28	Principal
$ 650.00	Interest
$	Attorney's fees
$ 24,953.28	Total plus court costs

DWOPPC Mary Brooks

SO ORDERED

/s/ Colleen Dolaw
Judges: Colleen Dolaw - 3434
4/10/95

*That to the best of affiant's knowledge and belief, the defendant(s) is employed in civilian life and that the defendant(s) is not now engaged in the military service of the United States.

Attorney Kenneth Bini
Bini, Steib, Reid & Kohn, P.C.
Address 1034 S. Brentwood Blvd
St. Louis, MO 63117-1223
Phone No. 314-862-7805

Sworn before me on 4-10-95

Deputy Clerk MB

(2)

Supreme Court, U.S.
FILED
AUG 7 - 2006
OFFICE OF THE CLERK

No. 06-25

IN THE

Supreme Court of the United States

JACKIE BROOKS,

Petitioner,

v.

AMERICAN GENERAL FINANCIAL SERVICES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION

BENJAMIN C. ACKERLY
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Attorneys for Respondent

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COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether Petitioner has presented compelling reasons for this Court to review the decision of the U.S. Court of Appeals for the Eighth Circuit, which affirmed the discretionary denial by the bankruptcy court of Petitioner's motions to reopen his bankruptcy case?

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

No publicly held company directly owns 10% or more of the stock of Respondent, American General Financial Services, Inc., formerly known as American General Finance, Inc. However, Respondent is wholly owned by American General Finance Corporation, which is wholly owned by American General Finance, Inc., which is wholly owned by American General Corporation, which is wholly owned by American International Group, Inc., a publicly held company.

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INTRODUCTION

Petitioner has not presented compelling reasons to grant his Petition for a Writ of *Certiorari*. *See* Sup. Ct. R. 10. The subject of the Petition is the Order of the U.S. Court of Appeals for the Eighth Circuit (the "Eighth Circuit") affirming a bankruptcy court's denial of Petitioner's motions to reopen his bankruptcy case. Denial of such a motion is reviewed under an abuse of discretion standard. The Eighth Circuit's decision is not in conflict with a decision of this Court or another Court of Appeals. Nor does this appeal involve an important federal question that has not been resolved by this Court. Accordingly, the Petition should be denied.

STATEMENT OF THE CASE

Petitioner has been a debtor in three Chapter 13 bankruptcy cases in the U.S. Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court"). The first was filed in 1995, the second in 2000, and the third in 2001. *See Motion for Relief from Stay and to Ratify Foreclosure Sale ("Motion for Relief"), June 5, 2001, Bankr. E.D. Mo., Case Number 01-43603, Docket Number 36.* Each case was dismissed prior to Petitioner obtaining a discharge due to his failure to make all payments required by his Chapter 13 plan. *See id.*; *Order, August 20, 2003, Bankr. E.D. Mo., Case Number 01-43603, Docket Number 97.*

Following dismissal of the 1995 bankruptcy, Respondent sought to foreclose on real property on which it maintained a mortgage lien to secure the loan provided to Petitioner and his wife. Petitioner, however, filed two additional bankruptcy petitions on the eve of scheduled foreclosure sales, which stayed the foreclosure sales. *See Motion for Relief.*

In the third bankruptcy, Case No. 01-43603-399, Respondent sought and obtained relief from the automatic stay of 11 U.S.C. § 362(a) to conduct a foreclosure sale. *Order, April 19, 2001, Bankr. E.D. Mo., Case Number 01-43603, Docket Number 18.* Following an *ex parte* hearing on the motion for relief from stay, the Bankruptcy Court granted relief to Respondent, which then conducted the foreclosure sale that day. *Id.; see Order, July 9, 2002, U.S. Dist. Ct. E.D. Mo., Case Number 4:01CV1435, Docket Number 34 ("July 9 Order").* Respondent purchased the property at the foreclosure sale. *Id.* The Bankruptcy Court later vacated the *ex parte* relief from stay order, conducted an evidentiary hearing on the motion, granted relief from stay and ratified the foreclosure sale (the "Relief from Stay Order"). *See Order, July 17, 2001, Bankr. E.D. Mo., Case Number 01-43603, Docket Number 45; Transcript of Hearing, October 18, 2001, Bankr. E.D. Mo., Case Number 01-43603, Docket Number 60.*

Petitioner appealed the Relief from Stay Order, and the U.S. District Court for the Eastern District of Missouri (the "District Court") affirmed. *July 9, 2002 Order.* Petitioner then appealed to the Eighth Circuit, which remanded the case to the Bankruptcy Court to report on two factual issues, namely (1) whether Petitioner had paid Respondent in full, or in part, and received a discharge in the first bankruptcy, and (2) if Petitioner was indebted to Respondent, the rate of interest, if any, applicable to the debt. *Opinion, March 24, 2003, Eighth Circuit, Case Number 02-3041.*

On remand, the Bankruptcy Court determined that the bankruptcy case in which the appeal was taken, the third bankruptcy case, had been dismissed on March 14, 2002, while the Relief from Stay Order was on appeal. *Order,*

August 20, 2003, Bankr. E.D. Mo., Case Number 01-43603, Docket Number 97. The Bankruptcy Court concluded that, because the automatic stay no longer was applicable due to the dismissal of the bankruptcy, Respondent's motion for relief from the automatic stay was moot. *Id.* As a result, the Bankruptcy Court denied the relief from stay motion by Order entered August 20, 2003 (the "Relief Denial Order"). *Id.*

Upon receipt of the Relief Denial Order from the Bankruptcy Court, the Eighth Circuit dismissed the appeal as moot. *Order, January 8, 2004, Eighth Circuit, Case Number 02-3041.*

Petitioner subsequently filed motions to reopen the third bankruptcy case, pursuant to 11 U.S.C. § 350(b)[1], on March 30, 2004, and March 31, 2004 (the "Motions to Reopen"). *Motions to Reopen, Bankr. E.D. Mo., Case Number 01-43603, Docket Numbers 103, 104.* The Motions to Reopen state that Petitioner "wants to bring an action for clarification of whether [Respondent's] motion . . . for relief from stay was denied because there was no stay in the Bankruptcy Case No. 95-42416-399 and that an order be issued to convey the property back to [Petitioner]." *Id.* The Bankruptcy Court summarily denied the Motions to Reopen. *Order, April 7, 2004, Bankr. E.D. Mo., Case Number 01-43503, Docket Number 105.*

---

[1] Section 350 of the Bankruptcy Code provides as follows:

> (a) After an estate is fully administered and the court has discharged the trustee, the court shall close the case.
>
> (b) A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.

On appeal, the District Court affirmed the denial of the Motions to Reopen. *Order, March 28, 2005, U.S. Dist. Ct. E.D. Mo., Case Number 4:04CV526, Docket Number 12.* The District Court also denied Petitioner's motion for reconsideration. *Order, April 8, 2005, U.S. Dist. Ct. E.D. Mo., Case Number 4:04CV526, Docket Number 14.* The Eighth Circuit summarily affirmed. *Order, August 17, 2005, Eighth Circuit, Case Number 05-2330.* Petitioner's petition for rehearing and for a rehearing en banc in the Eighth Circuit both were denied. *Order, October 21, 2005, Eighth Circuit, Case Number 05-2330.* The Petition for a Writ of *Certiorari* concerns the Eighth Circuit's decision affirming the denial of the Motions to Reopen.

Petitioner incorrectly asserts that his Petition challenges the jurisdiction of the Bankruptcy Court and the propriety of that court's entry of the Relief from Stay Order and the Relief Denial Order in light of the dismissal of his 1995 bankruptcy case. Those issues are not involved in this appeal. The Relief from Stay Order was appealed by Petitioner, but that appeal was dismissed as moot by the Eighth Circuit following receipt of the Relief Denial Order. Petitioner did not timely appeal the entry of the Relief Denial Order or the Eighth Circuit's dismissal of his prior appeal as moot. Instead of appealing those orders, he sought to reopen his bankruptcy, and when that effort failed through appeals to the Eighth Circuit, he lodged the present Petition. Accordingly, the Petition properly should address only the denial of the Motions to Reopen, not the issues that he might have raised in appeals he never timely pursued. Also, contrary to Petitioner's assertion, neither his Petition, the Relief from Stay Order nor the Relief Denial Order concern his 1995 bankruptcy case; they concern only the 2001 bankruptcy case.

REASONS FOR DENYING THE PETITION

The decisions below do not conflict with a decision of this Court or any Court of Appeals. Courts uniformly have held that the denial of a motion to reopen a bankruptcy case is reviewed for an abuse of discretion. Moreover, the decision of the Bankruptcy Court in this case was not an abuse of its discretion. Accordingly, Petitioner has not established compelling reasons for this Court to grant his Petition. *See* Sup. Ct. R. 10.

I. A Bankruptcy Court's Denial of a Motion to Reopen a Bankruptcy Case is Reviewed for Abuse of Discretion

Pursuant to 11 U.S.C. § 350(b), "a [bankruptcy] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other relief." The appellate courts below properly reviewed the Bankruptcy Court's decision not to reopen the bankruptcy case under an abuse of discretion standard. *Dworsky v. Canal Street Ltd. P'ship (In re Canal Street Ltd. P'ship)*, 269 B.R. 375, 379 (B.A.P. 8th Cir. 2001). Under this standard, a bankruptcy court's denial of a motion to reopen should not be reversed unless the appellate court has a definite and firm conviction that the bankruptcy court committed a clear error of judgment in the conclusion it reached. *Id.*

In a case decided prior to enactment of the modern U.S. Bankruptcy Code, this Court addressed the standard for reviewing the denial of a motion to reopen a bankruptcy proceeding. In *Wragg v. Federal Land Bank of New Orleans*, 317 U.S. 325, 327 (1943), the Court held that "[w]e do not differ with the conclusion of both courts below that it was within the sound discretion of the bankruptcy court to decline

to reopen the original order of dismissal." Courts have applied the decision in *Wragg* in considering a motion to reopen under § 350(b) of the Bankruptcy Code. *See, e.g., In re Edmonds*, 27 B.R. 468, 469 (Bankr. E.D. Tenn. 1983) (citing *Wragg* for its holding that "it is within the sound discretion of the bankruptcy judge to either reopen a case or refuse to do so").

Application of an abuse of discretion standard in the Eighth Circuit was consistent with the standard uniformly applied by other Circuits in reviewing the denial of a motion to reopen a bankruptcy case. *See, e.g., In re Systems & Servs. Technologies, Inc. v. Davis (In re Davis)*, 314 F.3d 567, 570 (11th Cir. 2002) (review of bankruptcy court's order refusing to reopen is governed by abuse of discretion standard); *State Bank of India v. Chalasani (In re Chalasani)*, 92 F.3d 1300, 1307 (2d Cir. 1996) (bankruptcy court did not abuse its discretion denying motion to reopen adversary proceeding because debtor had failed to comply with discovery and reopening would prejudice creditor); *Thompson v. Virginia (In re Thompson)*, 16 F.3d 576, 581-82 (4th Cir. 1994), *cert. denied*, 512 U.S. 1221, 114 S. Ct. 2709, 129 L. Ed. 2d 836 (1994) (decision to reopen a bankruptcy case rests with discretion of bankruptcy court); *In re Bianucci*, 4 F.3d 526, 528 (7th Cir. 1993) (bankruptcy court did not abuse its discretion denying debtor's motion to reopen bankruptcy to avoid lien two years after case was closed); *Beezley v. California Land Title Co. (In re Beezley)*, 994 F.2d 1433, 1435 (9th Cir. 1993) (per curiam) (bankruptcy court did not abuse its discretion denying debtor's motion to reopen to add creditor because reopening would not have resulted in any effective relief because bankruptcy was a no asset, no bar date case); *Price v. Haker (In re Haker)*, 411 F.2d 568, 569 (5th Cir. 1969) (per curiam) (denial of motion to reopen

to pursue newly discovered asset was not abuse of discretion because chance of recovery to creditors from asset was too remote); *Dworsky*, 269 B.R. at 379 (bankruptcy court's denial of creditor's motion to reopen case five years after confirmation was not abuse of discretion); *Rockland Trust Co. v. Sheerin (In re Sheerin)*, 21 B.R. 438, 440 (B.A.P. 1st Cir. 1982) (bankruptcy court did not abuse its discretion by refusing to reopen case to pursue untimely complaint to determine non-dischargeability of debt).

II. The Bankruptcy Court Properly Denied the Motions to Reopen

A. Petitioner Has Not Complied with His Bankruptcy Obligations

In affirming the Bankruptcy Court's denial of Petitioner's Motions to Reopen, the District Court held that "[b]ecause of [Petitioner's] failure to comply with the rules and requirements of a debtor in a Chapter 13, I cannot conclude that the bankruptcy court's decisions denying [Petitioner's] motions to reopen his bankruptcy case were an abuse of discretion." The Eighth Circuit summarily affirmed the District Court's decision.

A failure by a debtor to comply with the rules and requirements of bankruptcy is adequate grounds to deny the debtor's motion to reopen his bankruptcy case. *See State Bank of India*, 92 F.3d at 1307 (affirming denial of motion to reopen adversary proceeding because debtor had failed to comply with discovery). In this case, Petitioner has had three bankruptcy cases dismissed prior to making all payments required by his Chapter 13 plan. In the latter two cases, the filings were made on the eve of foreclosure sales scheduled by Respondent. In these circumstances, the denial of Petitioner's Motions to Reopen was not an abuse of discretion.

B. Reopening Petitioner's Case Would Have Been a Futile Exercise

The reopening of a bankruptcy case does not alone grant substantive relief to the movant. The reopening merely grants the opportunity to seek relief in a bankruptcy case that previously was closed. *See State Bank of India*, 92 F.3d at 1307-08; *Internal Revenue Serv. v. Germaine (In re Germaine)*, 152 B.R. 619 (B.A.P. 9th Cir. 1993).

If the relief sought to be obtained upon the reopening of the case is not available to the movant, it is not an abuse of discretion for a bankruptcy court to deny the reopening to avoid a futile exercise. *See Beezley*, 994 F.2d at 1435 (reopening would not have resulted in effective relief because bankruptcy was no asset, no bar date case); *Rockland Trust Co.*, 21 B.R. at 440 (reopening inappropriate to pursue untimely complaint); *In re Schicke*, 290 B.R. 792, 798 (B.A.P. 10th Cir. 2003) ("A bankruptcy court that refuses to reopen a Chapter 7 case that has been closed will not abuse its discretion if it cannot afford the moving party any relief in the reopened case."); *Arleaux v. Arleaux*, 210 B.R. 148, (B.A.P. 8th Cir. 1997) (upholding decision denying debtor's motion to reopen bankruptcy when to do so would provide no relief to debtor); *In re Potes*, 336 B.R. 731, 732 (Bankr. E.D. Va. 2005) (motion to reopen should be denied if "no useful purpose can be served by reopening . . . .") (*citing In re Carberry*, 186 B.R. 401 (Bankr. E.D. Va. 1995)); *In re Patterson*, 297 B.R. 110, 114 (Bankr, E.D. Tenn. 2003) ("the court will not reopen a case if doing so would be futile") (*quoting In re Phillips*, 288 B.R. 585, 587 (Bankr. M.D. Ga. 2002)); *In re Hardy*, 209 B.R. 371, 379-80 (Bankr. E.D. Va. 1997) (denying debtor's motion to reopen when doing so would be futile because underlying claim lacked merit).

Petitioner's 2001 bankruptcy case was dismissed in 2002 on motion of the Chapter 13 Trustee due to the failure of Petitioner to comply with his Chapter 13 Plan. Upon the dismissal, the property of the estate revested in the debtor, pursuant to 11 U.S.C § 349(b)(3),[2] and the automatic stay of 11 U.S.C. § 362 terminated,[3] pursuant to 11 U.S.C. § 362(c)(1).[4]

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[2] Section 349(b)(3) provides as follows:

> (b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title —
>
> . . . .
>
> (3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

[3] Similarly, the automatic stay terminated upon the dismissal of the 1995 bankruptcy. Thus, Respondent was not stayed from collecting the debt Petitioner owed Respondent, and Petitioner had no obligation to seek to reopen the 1995 bankruptcy to seek relief from stay in the 2001 case to continue with the scheduled foreclosure sale.

[4] Section 362(c)(1) provides as follows:

> (c) Except as provided in subsections (d), (e), (f) and (h) of this section —
>
> (1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; . . . .

The reopening of a bankruptcy case does not reinstate the automatic stay. *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896 (B.A.P. 9th Cir. 1999). Thus, even if Petitioner's bankruptcy case had been reopened, the relief from stay issue would have remained a moot issue. Accordingly, reopening would have been a futile exercise.

CONCLUSION

Petitioner has not established compelling reasons for this Court to grant his Petition for a Writ of *Certiorari*. Accordingly, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted,

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